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24 UNITED STATES DISTRICT COURT
25 CENTRAL DISTRICT OF CALIFORNIA
26 SOUTHERN DIVISION

27 IN RE: TOYOTA MOTOR CORP.
28 UNINTENDED ACCELERATION
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

Case No.: 8:10ML2151 JVS (FMOx)

This documents relates to:
ALL ACTIONS

**STATEMENT OF CO-LEAD
COUNSEL FOR ECONOMIC
LOSS PLAINTIFFS REGARDING
THE COURT'S ORDER TO
SHOW CAUSE WHY THE
MASTER CONSOLIDATED
COMPLAINT FILED ON
BEHALF OF FOREIGN
PLAINTIFFS SHOULD NOT BE
STRICKEN**

Date: Sept. 13, 2010
Time: 3:00 p.m.
Place: Courtroom 10C

1 Pursuant to the Court's Order, dated August 3, 2010 (Doc. 269), Co-Lead
2 Counsel for Economic Loss Plaintiffs respectfully submit this statement regarding
3 the Court's Order to Show Cause why the Master Consolidated Complaint filed on
4 Behalf of Foreign Plaintiffs ("Foreign MCC") (Doc. 266) should not be stricken.

5 The filing of the Foreign MCC was beyond the scope of the Court's
6 specialized appointment of Monica R. Kelly, which was limited to serving as a
7 consultant to Plaintiffs' Liaison and Lead Counsel Committees "on foreign law
8 issues, including motions practice involving foreign law issues." Order No. 2 at 6–
9 7 (Doc. 169). Although not stated on the face of the pleading, the Foreign MCC
10 appears to be an unauthorized second amended complaint filed in an action
11 originally brought in the United States District Court for the Northern District of
12 Illinois, Case No. 1:10-cv-01931, and subsequently transferred to this Court by the
13 Judicial Panel on Multidistrict Litigation, and re-designated Case No. 8:10-cv-
14 00738. The complaint filed in that action was previously amended on April 27,
15 2010, prior to the transfer of the action by the filing of an amended complaint
16 ("Foreign FAC") to expand the case from one in which the plaintiff sought to
17 represent a class of Illinois consumers to one which is worldwide in scope. *See*
18 *Foreign FAC* at 15–16, ¶¶ 1 and 65 (Doc. 16 in No. 8:10-cv-00738) (asserting
19 claims on behalf of all purchasers and lessees of Recalled Toyota Vehicle(s) in
20 Germany, Turkey, Mexico, and "all other countries"). The Foreign MCC is filed by
21 certain of the plaintiffs named in that action and adds plaintiffs and modifies the
22 allegations of the Foreign FAC.

23 Any motion for leave to file the Foreign MCC required the consent of
24 Plaintiffs' Lead Counsel Committee and the signature of one of Co-Lead Counsel.
25 Order No. 4 at 2, ¶5 (Doc. 181). Plaintiffs' Co-Lead Counsel did not consent to the
26 filing of a motion for leave to file the Foreign MCC and no filing related thereto
27 was signed by any Co-Lead Counsel.
28

1 Ms. Kelly states that the Foreign MCC was filed “for the sole purpose” of
2 tolling the statute of limitations for foreign plaintiffs’ claims. Doc. 271 at 5, ¶10.
3 However, the class alleged in the Foreign MCC does not appear to be any broader
4 than the class alleged in the Foreign FAC. *See* Foreign MCC at 21–23, ¶75 (Doc.
5 266). Under those circumstances, it does not appear that the Foreign MCC adds
6 anything to the Foreign FAC for purposes of protecting absent class members in
7 foreign countries against the running of the statute of limitations.

8 We pointed out to Ms. Kelly that foreign plaintiffs represented by her already
9 had filed a complaint on behalf of a worldwide class and informed her that Lead
10 Counsel did not consent to Ms. Kelly filing a motion for leave to further amend that
11 complaint. Ms. Kelly did not explain why any further amendment was necessary to
12 protect foreign plaintiffs with respect to the statute of limitations.

13 We also informed Ms. Kelly that the Lead Counsel Committee took “no
14 position with respect to the filing of a new action by you.” By “new action,” we
15 meant a new case. (We did not understand any of the Court’s orders to prohibit the
16 filing of new cases without our consent.) We did not mean that we took no position
17 with respect to a motion to file an amended complaint, much less a consolidated
18 complaint of the type contemplated by the Court in Order No. 3. *See* Doc. 180 at 3;
19 *see also In re Propulsid Prods. Liab. Litig.*, 208 F.R.D. 133, 141–42 (E.D. La.
20 2002) (discussing the nature of a master complaint in the MDL context). Given the
21 limited nature of Ms. Kelly’s appointment and Co-Lead Counsel’s responsibility as
22 gatekeepers, we did not consent to her filing of the Foreign MCC.

1
2 Dated: August 23, 2010

Respectfully submitted,

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4 By: /s/ Steve W. Berman

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